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Subject:—

Opinions Under the

Indian Pass Port Act, 1920

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C O N T E N T S .

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PMB 26/7

Nil 26/7

Office of the R.L.A.

Constitution of India.

Article 5.

It appears that Miss Aziza Elain Heskel Sherbani, Irqui natio al, was residing in India from 15th December 1943 to 14th December 1948 on which date she left for Hongkong via Calcutta. She returned to India on 6th May 1950, and obtained a domicile certificate from the Presidency Magistrate, Bombay on 12th July 1950 , stating that "she has been here since 1943 and desires to reside in India permanently". She submitted the domicile certificate to the Commissioner of Police where upon her request for the cancellation of her registration as a foreigner was granted. She has now presented an application for the grant of an Indian Passport. The question raised for the R.L.A.'s consideration is whether Miss. Sherbani can be considered an Indian Citizen, even though she was absent from India from 14th December 1948 to 6th May 1950.

2. The case of Miss Sherbani is similar to the case of Shri Ephraim Ezekiel Sherbanee which was considered by the R.L.A. in his opinion No. 1180 , dated the 18th January 1951, with this difference that Miss Sherbani was not only away from India for a longer period but she was also absent for about a year i mediately before the Constitution of India came into operation. What is necessary, to entitle Miss Sherbani to the Indian Citizenship under Article 5 of the Constitution of India, is that she must have her domicile in the territory of India and must have been ordinarily resident in the territory of India for not less than by 5 years immediately preceding such commencement. It may be noted that article 5 does not require habitation but only the residence for the prescribed period. "Habitancy" implies greater permanency than its residence. A Man's residence is often a legal conclusion from statements showing his intention. Habitancy is a physical fact which may be proved by eye of witnesses."(See Willoughby on the Constitution of

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the U.S. Vol. I page 603). Miss Sherbani has made statements showing her intention to reside in India. The Presidency Magistrate has issued a domicile certificate that she has her domicile in the State of Bombay and has further stated that he has satisfied himself that she intends to stay here permanently. "A person's home is that country either in which he in fact resides with the intention of residence (animus manendi) or in which having so resided he continues actually to reside though no longer retaining the intention of residence (animus manendi) or with regard to which having so resided there he retains intention of residence (animus manendi) though he in fact no longer resides there". (See Diceys Conflict of Law, 6th Edn. page 78). Consequently Miss Sherbani's absence from India from 14th December 1948 , to 6th May 1950 , could not be material provided she had retained her 'animus manendi' to reside in India, and the Magistrate in issuing the Domicile Certificate seems to have been satisfied of Miss Sherbani's 'animus manendi'. The fact that her registration as a foreigner has been cancelled would also support her claims for citizenship. In the circumstances, it appears that there would be no legal objection to recognising her as an Indian Citizen.

Id/- P.M.L.
dt/- 25/1/

Remembrancer of Legal Affairs .

V.v.k. 22/6/
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U.R. to P.S. D. ,No. 1632 , dated the 27th January 1951.

Office of the R.L.A.

Constitution of India Article 5, Rules Governing the Issued of Passports and Visas, rule 7(i)

Rule 7 clause (i) of the Rules Governing the Issue of Passports and Visas provides that "If British Indian Passports may not ~~xxxxxxxxxxxxxxxx~~ be issued to British subjects of dual nationality in thecountry of thier second nationality in cases where the Government ofthat country claims exclusive jurisdeiction over such persons and interposes formal objections to the grant of Indian passports to them while they are within such jurisdiction." This provision seems to have been made in conformity with the International Law according to which an individual may possess double nationality ,knowingly or unknowingly and with or without intention and double nationalaity may be produced by every mode of acquiring nationality. Naturalisation in the narrow sense of the term is frequently causing double nationality since individuals may apply ~~xxx~~ for or receive naturalisation in a State without thereby losing the nationality of thier eije home State.(See oppenheim's International Law, Chapter III).

2. In the present case it appears that Lutfullah Daudzada possessed double nationality by virtue of his being given a naturalisation certificate under the Indian Naturalisation Act, 1926.However, that Act has been repealed by the Adaptation of Laws, Order , 1950 and the certificate issued there-under by the North Western Frontier Province Government therefore no longer survives.He has been, on his return from Iran, regis'ered as a foreigner and if he were so very keen on being continued as a British Indian subject, he should have immediately protested against registration and taken steps to get the entry deleted.Besides , he failed to recover his British Indian Passport on his return from Iran though he was clearly given o under-

stand his right to reclaim it. Whatever the position may be, he has now to satisfy the requirements of the Constitution of India if he wants to claim the Indian citizenship right ,Under article 5 of the Constitution of India he can claim tobe a citizen only when he can prove that he has his domicile in he territory of India and /has been ordinary resident in the territory of India for not less than 5 years immediately preceding such commencemaat. It is for him to prove his domicile as ell as his ordinary residence in the territory of India if he wants to claim to be a citizen of India .

Id/- P.M.L.
dt/ - 10/1/

Remembrancer of Legal Affairs.

U.R. to P. & S.D. Dept. No. 525 , d. the 10/1/1951.

V.v.k. 22/6/66/

5C.

Office of the R.L.A.

Citizenship-for passport. Constitution of India-Article 5, 6(b(II).

Shri Zenool Abbasbhoy Lampwala was born in Bombay on 11th March 1920. He can therefore be considered to be a citizen of India within the meaning of article 5(a) of the Constitution of India .It is true that he had gone to Pakistan in 1948 and returned to India in 1950 .It also appears that he has not made any application nor is he registered as citizen of India under article 6(b)(ii) . But it appears that his intention was not to migrate to Pakistan when he went there in 1948 and had he acquired the citizenship of Pakistan he would not have been granted a permanent permit to return to India by the Indian High Commissioner at Karachi. Consequently he appears to be a citizen of India under article 5(a) of the Constitution.

Id/-
dt/- 5/4/

Remembrancer of Legal Affairs.

U.R. to Passport Office , No. 5471 , dated the 5th April 1951.

V.v.k. 22/6/56/
5C.